

JAN 19 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff - Appellee,****v.****GONZALO MIRAMONTES-FRAUSTO,****Defendant - Appellant.****No. 04-50366****D.C. No. CR-04-00005-RT-01****MEMORANDUM^{*}**

**Appeal from the United States District Court
for the Central District of California
Robert J. Timlin, District Judge, Presiding**

Submitted January 9, 2006^{}**

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Gonzalo Miramontes-Frausto appeals from his guilty-plea conviction and 70-month sentence for being an illegal alien found in the United States following deportation, in violation of 8 U.S.C. § 1326.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Miramontes-Frausto has filed a brief stating there are no grounds for relief, and a motion to withdraw as counsel of record. Miramontes-Frausto has not filed a pro se supplemental brief.

Because our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 82-83 (1988), indicates that Miramontes-Frausto knowingly and voluntarily waived his right to appeal and was sentenced within the terms of the plea agreement, we enforce the waiver and dismiss the appeal. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000) (stating that an appeal waiver is valid when it is entered knowingly and voluntarily); *see also United States v. Cardenas*, 405 F.3d 1046, 1048 (9th Cir. 2005) (noting that the changes in sentencing law imposed by *United States v. Booker*, 125 S. Ct. 738 (2005), did not render waiver of appeal involuntary and unknowing).

Counsel's motion to withdraw is **GRANTED**, and the appeal is **DISMISSED**.